

The Consequences of Syria: Does the Responsibility to Protect Have a Future?

Written by Gareth Evans

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GARETH EVANS, JAN 27 2014

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After 1000 days of conflict, more than 120,000 deaths, and with nearly half the population displaced within and beyond its borders, there is no end in sight to Syria's civil war. The hoped-for diplomatic momentum following the breakthrough agreement on chemical weapons in September 2013 has not eventuated, and expectations are minimal for the Geneva talks scheduled to commence in late January 2014.

Who is to blame for the failure to prevent or halt this ugly war, the world's worst continuing conflict? Was there any kind of intervention—and if so, by whom and when—that could have made a difference? More generally, does Syria sound the death knell for the new Responsibility to Protect (R2P) norm, embraced unanimously, with hope and fanfare, by the UN General Assembly meeting at head of state and government level in 2005, and applied with conspicuous effect by the Security Council in Côte d'Ivoire and Libya in 2011? Are mass atrocity crimes—genocide, ethnic cleansing, major war crimes and crimes against humanity—going to become, once again, the subject of global indifference?

There are no easy answers to any of these questions, and they are going to be long debated. But despair would be premature. There are at least some grounds for optimism that—even if it has come too late to avert the worst of the suffering in Syria—we are not necessarily condemned to go on repeating the horrors of the past, the catastrophes of Cambodia, Rwanda, Bosnia, and the like, now etched so deeply in our collective memory.

The tensions that exploded in Syria in early 2011 were long in the making and never going to be easily containable. But a major opportunity to break the cycle of violence breeding violence was completely lost with the failure of the UN Security Council to even condemn the behaviour of the Assad regime, let alone take more robust measures, when it first became obvious that unarmed protestors were being savagely attacked, and for many months thereafter. That gave the regime a sense of untouchability and impunity, leading to further repressive behaviour which energised a fight-back by opposition forces, helped by military defections and some external support, which spiralled quickly into the full-scale civil war we have been watching, with horror, unfold ever since.

What was needed in mid-2011 was not a Security Council decision mandating the use of coercive military force. The Syrian situation was then, and has remained since, very different from that in Libya, and the case for military intervention has always been very much harder to make: at every relevant stage, such action would almost certainly have resulted in more casualties, not less. But the case for a condemnatory *statement* was overwhelming, and had that been supplemented by the kind of measures that were initially applied in Libya—sanctions, an arms embargo, and threat of International Criminal Court prosecution—Assad would certainly have been given cause for pause.

So what went wrong? There is an obvious answer, even if it continues to be met with denial and resistance by those who most need to accept it. And that is the perception by a large number of countries—led by the so-called “BRICS”

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(Brazil, Russia, India, China and South Africa)—that the major Western powers, as the NATO-led intervention in Libya went on, overreached the civilian protection mandate they had been given by the Security Council by demanding, and achieving, nothing less than the complete destruction of the Gaddafi regime.

There was no problem at the outset, just as there was (and has remained since) no problem with the quickly concluded military action in Côte d'Ivoire. In allowing Resolution 1973 of March 2011 to pass, authorising as it did "all necessary measures... to protect civilians and civilian populated areas under threat of attack," all members of the Council knew exactly what they were doing. The NATO-led airborne forces did precisely what they were expected to do, and the immediately-feared massacres in Benghazi and elsewhere did not eventuate. If the Security Council had acted equally decisively and robustly in the 1990s, the 8,000 murdered in Srebrenica and 800,000 in Rwanda might still be alive today.

The real complaints related to the days, weeks, and months which followed, when it became very evident, from both their words and deeds, that the three permanent member states driving the intervention (the US, UK, and France, or "P3") would settle for nothing less than regime change, and do whatever it took to achieve that. The charge sheet includes the interveners rejecting ceasefire offers that may have been serious, and which certainly should at least have been explored; striking fleeing personnel that posed no immediate risk to civilians; striking locations that had no obvious military significance (like the compound in which Gaddafi relatives were killed); and, more generally, comprehensively supporting the rebel side in what rapidly became a civil war, ignoring the very explicit arms embargo in the process.

The P3 continues to have some strong answers to these criticisms. If civilians were to be protected house-to-house in areas like Tripoli under Gaddafi's direct control, they say, that could only be by overturning his whole regime. If one side was taken in a civil war, it was because one-sided regime killing sometimes leads (as now in Syria) to civilians acquiring arms to fight back and recruiting army defectors. A more limited "monitor and swoop" concept of operations would have led to longer and messier conflict, politically impossible to sustain in the US and Europe, and likely to have produced many more civilian casualties.

While these arguments all have force, the trouble remains that the P3 resisted debate on them at any stage in the Security Council itself, and other Council members were never given sufficient information to enable them to be evaluated. Maybe not all the BRICS are to be believed when they say that, had better process been followed, more common ground could have been achieved: Russia's position on Syria was from the outset manifestly *realpolitik*-driven. But they can be believed when they say they feel bruised by the P3's dismissiveness during the Libyan campaign—and that those bruises will have to heal before any consensus can be expected on tough responses to such situations in the future.

The question arises now as to whether, as a result of these events, there has been irretrievable breakdown in the Security Council as to how to react to the hardest mass atrocity crime situations, or whether consensus can be recreated. There are four reasons why I am optimistic that we are not headed back to the bad old days of the 1990s in this respect.

First, when the Security Council was confronted with unequivocal evidence of a mass atrocity crime, with the 2013 chemical weapons attacks in Ghouta, consensual action swiftly followed, authorising the destruction of the Syrian regime's chemical weapons and foreshadowing consideration of coercive action under Chapter VII of the UN Charter should it not cooperate. True, the decision was framed as a response to the proven use of an outlawed weapon of mass destruction, rather than a major war crime or crime against humanity breaching R2P principles. But what drove the decision was manifestly a unanimous sense of the total unconscionability, in this day and age, of this kind of indiscriminately inhumane action.

Second, for all its paralysis over Syria, the Security Council has, since its March 2011 decisions on Côte d'Ivoire and Libya, endorsed ten other resolutions directly referring to R2P: one concerning trade in small arms, but the others adopting measures to confront the threat of mass atrocities in Yemen, Libya, Mali, Sudan, South Sudan, and the Central African Republic.[1] None of these have authorized the use of military force, but together they confirm—as

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Simon Adams, head of the Global Centre for the Responsibility to Protect, puts it, paraphrasing Mark Twain—that the rumors of R2P's death in the Security Council have been greatly exaggerated.

Third, annual debates in the General Assembly continue to provide strong evidence that, disagreements over Libya notwithstanding, there is effectively universal consensus on basic R2P principles. No state is now heard to disagree that every sovereign state has the responsibility, to the best of its ability, to protect its own peoples from genocide, ethnic cleansing, and other major crimes against humanity and war crimes. No state disagrees that others have the responsibility, to the best of their own ability, to assist it to do so. And no state seriously continues to challenge the principle that the wider international community should respond with timely and decisive collective action when a state is manifestly failing to meet its responsibility to protect its own people. Certainly there is less general comfort with this last pillar than the first two, and there will always be argument about what precise form action should take in a particular case, but the basic principles are not under challenge. In this year's annual General Assembly debate on R2P in mid-September, in which 68 countries—more than ever before—participated, there was overwhelming support for these basic principles;^[2] and that support was repeated two weeks later in many strong leaders' statements in the general debate opening the new session.^[3]

Fourth, for all the division and paralysis over Libya and Syria, it is possible to see the beginning of a new dynamic in the Security Council that would enable the consensus that matters most—how to react in the Council on the hardest of cases—to be re-created in the future. The ice was broken in this respect by Brazil in late 2011 with its proposal that the idea be accepted of *supplementing* R2P, not replacing it, with a complementary set of principles and procedures which it has labelled “responsibility while protecting” or “RWP.” The two core elements of the proposal were that there should be a set of prudential criteria fully debated and taken into account before the Security Council mandated any use of military force, and that there should be some kind of enhanced monitoring and review processes which would enable such mandates to be seriously debated by all Council members during their implementation phase, with a view to ensuring so far as possible that consensus is maintained throughout the course of an operation.^[4]

While the disposition of the P3 so far has been to dismiss the Brazilian proposal as a spoiling tactic, albeit more sophisticated than most, it has become increasingly clear that, if a breakthrough is to be achieved—with un-vetoed majorities once again being possible in the Council in support of Chapter VII-based interventions in extreme cases—they are going to have to be more accommodating. The incentive to do so may be that there are now intriguing signs that the two BRICS countries that matter most in this context, because of their veto-wielding powers, China and Russia, may be interested in pursuing these ideas further.

At a two-day meeting in Beijing in October 2013, hosted by the foreign ministry's think tank, the China Institute of International Studies, which brought together specialist scholars and practitioners from China and the other BRICS countries (Brazil, Russia, India, and South Africa), along with a handful of Western specialists, strong support was expressed around the table for the principle of “Responsible Protection” (“RP”), which had been floated by the Chinese scholar Ruan Zongze in a 2012 journal article,^[5] which explicitly referred to and built upon the Brazilian RWP proposal, and which evidently had been the subject of much internal discussion since in Chinese policymaking circles. True, some Chinese scholars remained inclined to argue that the entire R2P enterprise—particularly its sanction of military action in exceptional cases—was just “old neo-interventionist wine in a new bottle.” But this did not appear to be a majority sentiment, nor did it stop anyone at this meeting from engaging in lively discussion of how the R2P doctrine could be most effectively implemented in practice.

And then in the same month, the Diplomatic Academy of the Russian Ministry of Foreign Affairs, apparently on the initiative of Foreign Minister Lavrov himself, hosted a one-day meeting on R2P, evidently the first of its kind, attended by senior ministry officials and Russian academics and a handful of Western specialists, including the Global Centre's Director, Simon Adams, and the new UN Special Adviser on R2P, Professor Jennifer Welsh. While a little less focused than the Beijing event, there was again much attention paid to RWP and the Chinese RP concept, and an emerging sense from the meeting that Russia needed to align itself with those views.

It remains to be seen whether China and Russia—and the other BRICS countries—will now move to champion the

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idea of RP or RWP in a more formal, officially endorsed, way. If they do, it should not be viewed as a rear-guard action designed to undermine the R2P norm, but rather an effort to assume co-ownership of it. And in terms of getting serious about saying “never again” to mass-atrocity crimes, that is about as positive a development as anyone could hope for.[6]

What is needed now is the initiation of a serious discussion within the Council—using informal processes in the first instance, which I hope my own country, Australia, might play a role in leading over the next year—to put some detailed substance into the two elements highlighted in the original RWP proposal and repeated in the RP formulation.

The first is systematic attention to the relevant prudential criteria for the use of coercive military force, not yet formally adopted in any UN process, but spelt out in the initial Commission report which introduced the Responsibility to Protect concept more than a decade ago[7] and very much part of the currency of international debate ever since, viz. *seriousness of harm involved, right intention, last resort, proportionality and balance of consequences*. It would not be necessary, and probably counterproductive to try, to formally adopt these five criteria in a formal Security Council or General Assembly resolution. Nor can it be argued that attention to these benchmarks will produce consensus with push-button consistency: life is never that easy. But there is plenty of reason to believe that if an understanding develops that those arguing a case for military intervention must in practice make a detailed and compelling case that all five criteria would be satisfied, the chances of reaching consensus—one way or the other—will be significantly improved.

In the case of Syria, for example, at least two of these criteria have seemed to most objective observers to have always been difficult to satisfy. “Proportionality” demands that the scale, duration, and intensity of any proposed military action be the minimum necessary to meet the threat in question, but the trouble with most of the proposed “minimalist” intervention solutions—establishing “no-fly zones” or “no kill” buffer zones, for example—is that, in Syrian conditions, full-scale warfare would almost certainly have been required to impose them: the minimum may entail something like the maximum. Similarly with the “balance of consequences,” most analysts agree that any military intervention would have to be massive in scale to secure a peace, and likely to generate many more casualties along the way than it would prevent, given the complications posed (unlike in Libya) by a strong government military, profound internal sectarian differences, the strength of jihadist and anti-democratic elements within the opposition, and the potential for any intervention to ignite the whole region.

The other element of a new process would require some kind of serious ongoing review of coercive mandates once granted. This is likely to be met with some resistance by the P3 on the grounds that there must be some flexibility in the implementation of any military mandate, and that military operations can never be micro-managed. These are not unreasonable concerns, but equally there is no reason, in principle or practice, why broad concepts of operations, as distinct from strategy or tactics, should not be regularly debated and questioned as necessary. Whether civilian protection can be accomplished without full-scale war-fighting and regime-change is exactly such a question that the P3 should be prepared to debate. It is not necessarily a matter of establishing any new institutional mechanism—though sunset clauses, requiring formal renewal if a mission is to continue, are hardly unfamiliar in the Security Council. It is more a matter, again, of there being some real understanding that ongoing debate on mandate implementation is wholly legitimate.

It is probably too late to hope that evolution of a new consensus along these lines will make much difference in Syria itself, where the only hope now appears to be a diplomatic solution, brokered by the US and Russia working cooperatively together and with all options for the composition of a transitional administration left on the table. But it does hold out the hope of getting the R2P project back on track for future hard cases.

It is important to emphasise that the disagreement now evident in the UN Security Council *is* really only about how the R2P norm is to be applied in the hardest, sharp-end cases, those where prevention has manifestly failed and the harm to civilians being experienced or feared is so great that the issue of military force has to be given at least some *prima facie* consideration. But of course these *are* the talismanic cases, and if consensus has broken down at the highest political level on how they should be handled, there is a danger of flow-on risk to the credibility of the whole

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R2P enterprise. After all that has been achieved in the last decade, that would be profoundly disappointing.

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[1] For a full list of UN Security Council resolutions that reference R2P, see the Global Centre for the Responsibility to Protect. Accessed at <http://www.global2p.org/resources/335> (Jan. 14, 2014).

[2] Global Centre for the Responsibility to Protect, "'State Responsibility and Prevention': Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect held on 11 September 2013," (22 October 2013). Accessed at <http://www.globalr2p.org/media/files/summary-of-the-2013-r2p-dialogue.pdf> (Jan. 14, 2014).

[3] Global Centre for the Responsibility to Protect, "The Responsibility to Protect at the Opening of the 68th Session of the United Nations General Assembly," (4 October 2013). Accessed at <http://www.globalr2p.org/media/files/2013-ga-quotes-summary-2.pdf> (Jan. 14, 2014).

[4] For an extended discussion, with full references, of the Brazilian proposal, see James Pattison, "The Ethics of 'Responsibility While Protecting': BRAZIL, The Responsibility To Protect, And Guidelines For Humanitarian Intervention," Human Rights & Human Welfare, working paper no. 71 (1 April 2013). Accessed at <http://www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf> (Jan. 14, 2014). See also Gareth Evans, "Mass Atrocities and the Use of Force: R2P After Libya and Syria," panel presentation to Conectas International Human Rights Colloquium, Sao Paulo, Brazil (16 October 2012). Accessed at <http://www.gevans.org/speeches/speech492.html> (Jan. 14, 2014).

[5] Ruan Zongze, "Responsible Protection: Building a Safer World," China Institute of International Studies (Jun 15 2012). Accessed at http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm (Jan. 14, 2014).

[6] This account of the Beijing and Moscow meetings draws on Gareth Evans, "Protecting Civilians Responsibly," Project Syndicate (Oct 25, 2013). Accessed at <http://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embrace-humanitarian-intervention> (Jan. 14, 2014).

[7] International Commission on Intervention and State Sovereignty, Gareth Evans and

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Mohamed Sahnoun (co-chairs), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001). Accessed at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (Jan. 14, 2014).